

STATE OF MICHIGAN
COURT OF APPEALS

HAROLD B. RAMSEY and R. JEAN RAMSEY,

Plaintiffs-Appellees,

v

CITY OF DETROIT,

Defendant/Third-Party Plaintiff-
Appellant,

and

EAGLE WRECKING, INC., d/b/a EGO
WRECKING & DEMOLITION, and WESTERN
WORLD INSURANCE COMPANY,

Third-Party Defendants-Appellees.

UNPUBLISHED

January 28, 2000

No. 207254

Wayne Circuit Court

LC No. 95-504901-CK

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Following a bench trial, the trial court awarded plaintiffs judgment against defendant in the amount of \$75,000 on plaintiffs' trespass-nuisance and inverse condemnation claims, arising from the wrongful demolition of plaintiff's apartment building. Defendant filed a third-party complaint against Western World Insurance Company ("Western World"), but the trial court granted Western World's pretrial motion for summary disposition on the basis that defendant failed to provide timely notice of plaintiffs' claim as required by Western World's insurance policy. Defendant appeals as of right. We affirm.

The trial court did not err in denying defendant's pretrial motion for summary disposition under MCR 2.116(C)(7) (claim barred because of statute of limitations) with regard to plaintiffs' trespass-nuisance claim. MCR 2.116(C)(7); *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995). The facts established that plaintiffs had filed a claim for

compensation with the city arising from the wrongful demolition of their building and that the conduct of defendant's agents during the period in which this claim was pending had the effect of forestalling plaintiffs from filing suit in court. Thus, the trial court properly determined that defendant was equitably estopped from relying on the statute of limitations as a defense to plaintiffs' action. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997).

The trial court did not err in denying defendant's motion for judgment notwithstanding the verdict with regard to the inverse condemnation claim. Intentional conduct directed towards plaintiffs' property is not required to support a claim for inverse condemnation, *Peterman v Dep't of Natural Resources*, 446 Mich 177, 190; 521 NW2d 499 (1994), and plaintiffs presented sufficient evidence to show that defendant proximately caused the destruction of their building.

We also conclude that the elements for trespass-nuisance were sufficiently established. *CS&P, Inc v City of Midland*, 229 Mich App 141, 145-146; 580 NW2d 468 (1998), lv gtd ___ Mich ___ (Nos. 112921 & 112922, rel'd 10/1/99). The facts showed that defendant was in control of the property where the demolition was scheduled to occur and that that project led to the destruction of plaintiffs' building. *Baker v Waste Management of Michigan, Inc*, 208 Mich App 602, 606; 528 NW2d 835 (1995).¹

The trial court did not abuse its discretion in allowing plaintiffs to amend their complaint to add the trespass-nuisance theory on the day of trial. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). Considering that there were few facts in dispute and the circumstances of this case, the late amendment did not prejudice defendant's right to a fair trial. Cf. *Weymers, supra* at 659-662.

Finally, the trial court did not err in granting Western World's pretrial motion for summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456; 597 NW2d 28 (1999). It was undisputed that defendant failed to notify Western World of plaintiffs' claim in 1985 or 1986, when plaintiffs filed their claim for compensation with the city. Notice by defendant of the filing of plaintiffs' lawsuit did not constitute timely notice of plaintiff's claim under the terms of the insurance contract. Moreover, given the interim events, Western World was prejudiced by the delay because evidence was lost and, due to defendant's actions, Western World could not avail itself of the statute of limitations defense. Also, Western World did not have prior notice of this claim as a result of a related federal lawsuit, considering that the other case did not involve defendant. Thus, summary disposition was properly granted.

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

¹ We have not considered the city ordinances attached to defendant's reply brief on appeal because those documents were not produced for the trial court and, more significantly, defendant stipulated in

the trial court that it had a duty to supervise the demolition project under the Building Officials and Code Administrators International, Inc., Basic Building Code and the city's ordinances.